

JUDGE SWAIN

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNIVERSITAS EDUCATION, LLC,

11 CIV 1590

: Case No.:

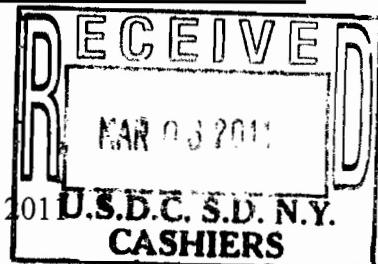
Petitioner,

v.

NOVA GROUP, INC., as Trustee, Sponsor
And Named Fiduciary of the CHARTER OAK
TRUST WELFARE BENEFIT PLAN,

Respondent.

: March 8, 2011



TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that Respondent NOVA GROUP, INC. ("Nova"), pursuant to 28 U.S.C. §§ 1331, 1332(a)(1) and 1441, hereby removes to this Court the civil action commenced by Petitioner **UNIVERSITAS EDUCATION, LLC** ("Universitas") in the Supreme Court of the State of New York, County of New York, Index No.: 650370/2011 (the "State Court Action").

Preliminary Statement

This action seeks to confirm a \$26.5 million arbitration award issued in favor of Universitas against Nova (the "Award"). An action regarding this exact same issue is already pending in the District of Connecticut by virtue of Nova having filed an application to vacate the Award in Connecticut State Court on January 2011 (the "Connecticut Action"), which Universitas subsequently removed to the District of Connecticut on or about March 3, 2011. As a result of the Connecticut Action having been removed by Universitas, Nova ascertained the

information necessary to establish the citizenship of Universitas for purposes of this Notice of Removal.

Grounds for Removal

In support of this Notice of Removal, Nova states as follows:

1. On or about February 11, 2011, Universitas commenced a civil action in the Supreme Court of the State of New York, County of New York by filing a Summons with Notice. A true and correct copy of the Summons with Notice is annexed hereto as Exhibit "A."
2. In the State Court Action, Universitas purports to seek to confirm an arbitration Award rendered in its favor on January 24, 2011 in the amount of \$26,525,535.98, examine an adverse party, and enter and enforce a judgment.
3. On February 17, 2011, Nova (through its registered agents) was served outside the State of New York with a copy of the Summons with Notice according to the Affidavits of Service attached as Exhibits "B" and "C." However, Nova has yet to be personally served.
4. This action is a civil action of which this Court has original jurisdiction pursuant to both 28 U.S.C. § 1332 and 28 U.S.C. § 1331. This action may be removed to this Court by Petitioner Nova pursuant to 28 U.S.C. §§ 1441 and 1446 because the Summons with Notice filed by Universitas on February 11, 2011 and received by Nova on February 17, 2011 states the nature of the action, the relief sought, and the real parties involved in the action. Since this Court would have had original subject matter jurisdiction over this action had it been commenced in federal court, removal of this action is proper under 28 U.S.C. § 1441.¹
5. Diversity jurisdiction pursuant to 28 U.S.C. § 1332 exists in this case based on the following:

¹ Nova, by removing the State Court Action to this Court, does not waive its right to assert any defense (including lack of personal jurisdiction) or to petition this Court for a change of venue.

- a. Universitas is a limited liability company with only two members: Donna Vassar and Sharon Siebert, both of whom reside in and are citizens of New York, having an address of 404 East 55th Street, Apt. 13A, New York, New York 10022. Thus, Universitas is a citizen of New York.
- b. Nova is a Delaware corporation with a principal place of business located at 100 Grist Mill Road, Simsbury, Connecticut 06070. Nova is the Trustee, Named Fiduciary, Plan Sponsor and Administrator of the Charter Oak Trust Welfare Benefit Plan, a Connecticut trust with an address of 100 Grist Mill Road, Simsbury, Connecticut 06070. Thus, pursuant to 28 U.S.C. § 1332(c)(1), Nova is a citizen of Delaware and Connecticut.
- c. As described in the Summons with Notice (Ex. A), Universitas seeks relief in the amount of \$26,525,535.98 – an amount well in excess of the amount in controversy requirement under 28 U.S.C. § 1332(b).

6. Based on the foregoing, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1), as it is a matter between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

7. Jurisdiction in this Court is also proper pursuant to 28 U.S.C. § 1331 because the underlying issue that will be determined through the prosecution of Universitas' State Court Action involves a determination that "necessarily depends on the resolution of a substantial question of federal law." *See Greenberg v. Bear, Stearns & Co.*, 220 F.3d 22, 26 (2nd Cir. 2000).

8. This notice is timely under 28 U.S.C. § 1446(b) because it has been filed within 30 days from the date upon which Nova first received a copy of the initial pleading.

9. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York, as required by 28 U.S.C. § 1446(d), and provided to counsel for Respondent Universitas.

WHEREFORE, Petitioner Nova respectfully requests that this action be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446, and placed on the docket of this Court for further proceedings as though originally instituted in this Court.

Dated: March 8, 2011

NOVA GROUP, INC.
By: 
Joseph M. Pastore III (JP 1717)
Paul R. Dehmel (PD 2711)
FOX ROTHSCHILD LLP
One Landmark Square, 21st Floor
Stamford, CT 06901
Telephone: (203) 425-9500

and

100 Park Avenue, Suite 1500
New York, New York 10017
Telephone: (212) 878-7900
E-mail: jpastore@foxrothschild.com
pdehmel@forxrothschild.com

Attorneys for RESPONDENT

CERTIFICATION

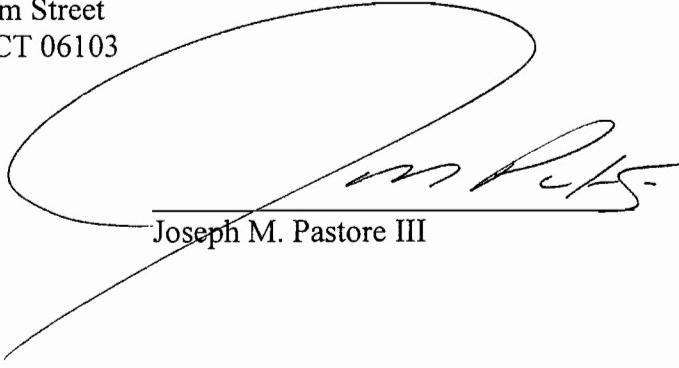
Pursuant to Fed. R. Civ. P. Rule 5(b), I hereby certify that a copy of the above was mailed or electronically delivered on March 8, 2011 to:

James T. Shearin, Esq.
Pullman & Comley, LLC
850 Main Street, P.O. Box 2006
Bridgeport, CT 06601-7006

Paula K. Colbath, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154

Richard S. Order, Esq.
Kevin J. McEleney, Esq.
Updike, Kelly & Spellacy, P.C.
100 Pearl Street, P.O. Box 231277
Hartford, CT 06123-1277

William J. McGrath, Esq.
Daniel P. Scapellati, Esq.
Scott S. McKessy, Esq.
Halloran & Sage LLP
Pne Goodwin Square
225 Asylum Street
Hartford, CT 06103



Joseph M. Pastore III

Exhibit A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X

Application of :
UNIVERSITAS EDUCATION, LLC,
:
Petitioner,
:
For an Order Pursuant to Article 75 of the : Index No.
CPLR Confirming an Arbitration Award :
-against- : Date of Purchase:
NOVA GROUP, INC. as Trustee, Named :
Fiduciary, Plan Sponsor and Administrator of :
the Charter Oak Trust Welfare Benefit Plan, :
:
Respondent. :
----- X

SUMMONS WITH NOTICE

TO THE ABOVE NAMED RESPONDENTS:

YOU ARE HEREBY SUMMONED to serve a notice of appearance on Plaintiff's attorney, at the address stated below, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

New York County is designated as the place of trial on the basis of the parties' New York arbitration and the parties' transaction of business in New York County.

TAKE NOTICE THAT this is a proceeding to confirm an arbitration award, examine an adverse party, and enter and enforce a judgment. The relief sought is

an order confirming the arbitration award, an examination regarding assets, and entry of judgment in favor of Petitioner.

PLEASE ALSO TAKE NOTICE that in case of your failure to appear, judgment will be sought and may be taken against you in the sum of \$26,525,535.98, with interest thereon, together with the costs, expenses, attorneys' fees and disbursements of this action.

Dated: New York, New York
February 11, 2011

LOEB & LOEB LLP

By: 

Paula K. Colbath
Jennifer A. Williams
345 Park Avenue
New York, New York 10154-1895
(212) 407-4000

Attorneys for Petitioner

CERTIFICATION

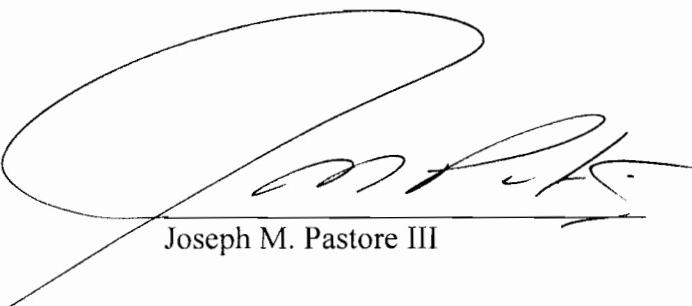
I hereby certify that on March 8, 2011, I caused a true and correct copy of the above to be served by U.S. mail upon the following:

James T. Shearin, Esq.
Pullman & Comley, LLC
850 Main Street, P.O. Box 2006
Bridgeport, CT 06601-7006

Paula K. Colbath, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154

Richard S. Order, Esq.
Kevin J. McEleney, Esq.
Updike, Kelly & Spellacy, P.C.
100 Pearl Street, P.O. Box 231277
Hartford, CT 06123-1277

William J. McGrath, Esq.
Daniel P. Scapellati, Esq.
Scott S. McKessy, Esq.
Halloran & Sage LLP
Pne Goodwin Square
225 Asylum Street
Hartford, CT 06103



A handwritten signature in black ink, appearing to read "Joseph M. Pastore III". The signature is fluid and cursive, with a large, stylized "J" at the beginning.

Joseph M. Pastore III

Exhibit B



Demovsky Lawyer Service
Premier Nationwide Document Retrieval
and Process Service Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

Application of
UNIVERSITAS EDUCATION, LLC,

Petitioner,

Index No. 650370/11

For an Order Pursuant to Article 75 of the
CPLR Confirming an Arbitration Award

-against-

AFFIDAVIT OF SERVICE

NOVA GROUP, INC. as Trustee, Named
Fiduciary, Plan Sponsor and Administrator of
the Charter Oak Trust Welfare Benefit Plan,

Respondent

X

STATE OF DELAWARE)
S.S.:
COUNTY OF NEW CASTLE)

DANIEL NEWCOMB, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 17th day of February, 2011, at approximately the time of 2:35pm, deponent served a true copy of the SUMMONS WITH NOTICE upon NOVA GROUP, INC., c/o Corporation Trust Company at 1209 Orange Street, Wilmington, Delaware by personally delivering and leaving the same with SCOTT LASCALA who informed deponent that he holds the position of Managing Agent with that company and is authorized by appointment to receive service at that address.

Scott LaScala is a white male, in his 40's, stands approximately 5 feet 10 inches tall, weighs approximately 170 pounds with brown hair.


DANIEL NEWCOMB

D.L.S., Inc.
401 Broadway
Ste 510
NY, NY 10013
212-925-1220
www.dlsny.com

Sworn to before me this
1 day of February, 2011


NOTARY PUBLIC

KIMBERLY J. RYAN
NOTARY PUBLIC-DELAWARE
My Commission Expires June 15, 2012

Exhibit C



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

Application of
UNIVERSITAS EDUCATION, LLC,

Petitioner,

Index No. 650370/11

For an Order Pursuant to Article 75 of the
CPLR Confirming an Arbitration Award

-against-

AFFIDAVIT OF SERVICE

NOVA GROUP, INC. as Trustee, Named
Fiduciary, Plan Sponsor and Administrator of
The Charter Oak Trust Welfare Benefit Plan,

Respondent

X

STATE OF CONNECTICUT)
S.S.:
COUNTY OF HARTFORD)

RICH ZECHIEL, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 17th day of FEBRUARY 2011, at approximately the time of 11:00 AM, deponent served a true copy of the SUMMONS WITH NOTICE upon NOVA GROUP, INC. c/o HALLORAN & SAGE at 225 ASYLUM STREET, HARTFORD, CONNECTICUT by personally delivering and leaving the same with TRACY MONTALBANO who informed deponent that she holds the position of Associate Attorney with that company and is authorized by appointment to receive service at that address.

Tracy Montalbano is a white female, approximately 35 years of age, stands approximately 5 feet 7 inches tall, and weighs approximately 110 pounds with black hair.

RICH ZECHIEL

Sworn to before me this
22 day of FEBRUARY 2011

Katherine Chaves
NOTARY PUBLIC

